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Filing date: **10/29/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187017
Party	Plaintiff Take Two Interactive Software, Inc.
Correspondence Address	Ashima A. Dayal, Esq. Davis & Gilbert LLP 1740 Broadway New York, NY 10019 UNITED STATES adaya@dglaw.com, Benita.Das@take2games.com, jwatson@dglaw.com, chinton@dglaw.com, trademarks@dglaw.com, bsinger@dglaw.com
Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/Ashima A. Dayal, Esq./
Date	10/29/2008
Attachments	motion to Amend Notice of Opposition.PDF ( 2 pages )(50753 bytes ) Amended Notice of Opposition.PDF ( 44 pages )(1529301 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Ser. No. 77/480,852

Take-Two Interactive Software, Inc.,

Opposer,

-v-

Devone Lawson, Inc.,

Applicant.

Opposition No. 91187017

**MOTION TO AMEND NOTICE OF OPPOSITION PURSUANT TO RULE 15(a) OF  
THE FEDERAL RULES OF CIVIL PROCEDURE**

Take-Two Interactive Software, Inc. ("Opposer"), by its attorneys Davis & Gilbert LLP, respectfully submits this motion to amend its Notice of Opposition, filed October 16, 2008, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure (the "Motion").

37 C.F.R. § 2.107(a) provides that "[p]leadings in an opposition proceeding against an application filed under section 1 or 44 of the [Lanham] Act may be amended in the same manner and to the same extent as in a civil action in a United States district court." Under the Federal Rules of Civil Procedure, "[a] party may amend its pleading once as a matter of course before being served with a responsive pleading." Fed. R. Civ. P. 15(a)(1)(A).

Devone Lawson, Inc. ("Applicant") has not filed a responsive pleading in Opposition No. 91187017 to date. Accordingly, Opposer's Motion is made as a matter of course and Applicant's consent is not required.

Opposer hereby concurrently submits its Amended Notice of Opposition.  
Opposer amended the Notice of Opposition so that the elements pled are accurate and complete.

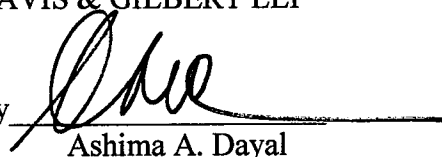
Opposer will serve Applicant with this Motion and the Amended Notice of Opposition by First Class mail as of this date.

WHEREFORE, Opposer submits its Motion to Amend Notice of Opposition Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure and its Amended Notice of Opposition.

Dated: October 29, 2008

DAVIS & GILBERT LLP

By

A handwritten signature in black ink, appearing to read 'Ashima', is written over a horizontal line.

Ashima A. Dayal

1740 Broadway  
New York, New York 10019  
(212) 468-4800

Attorneys for Opposer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Ser. No. 77/480,852

Take-Two Interactive Software, Inc.,

Opposer,

-v-

Devone Lawson, Inc.,

Applicant.

Opposition No. 91187017

**AMENDED NOTICE OF OPPOSITION**

Take-Two Interactive Software, Inc. (“Opposer”), a Delaware corporation based in New York, New York, having a place of business at 622 Broadway, New York, NY 10012, believes that it will be damaged by the registration of the trademark GRAND THEFT AUTO (the “Subject Mark”) that is the subject of application Serial No. 77/480,852 (the “Subject Application”), and hereby opposes the same on the following grounds:

**BACKGROUND FACTS**

**A. The GRAND THEFT AUTO Marks**

1. Opposer is one of the world’s most famous and successful video game developers and publishers. Opposer’s award-winning games include the GRAND THEFT AUTO series, which is one of the best-selling and best-reviewed titles of all time. Opposer’s game GRAND THEFT AUTO IV earned Guinness World Records for “Highest Grossing Video Game in 24 Hours” and “Highest Revenue Generated by an Entertainment Product in 24 Hours.”

2. Opposer is the owner of the following valid and subsisting federal registrations and pending applications for GRAND THEFT AUTO and related combination marks (collectively, the “GRAND THEFT AUTO Marks”):

<u>Mark</u>	<u>U.S. Reg./Ser. No.</u>	<u>Int. Class(es)</u>
GRAND THEFT AUTO	2,148,765	9, 16 and 38
GRAND THEFT AUTO III	2,755,932	9
GRAND THEFT AUTO VICE CITY	2,909,548	9
GRAND THEFT AUTO: SAN ANDREAS	2,993,273	9
GRAND THEFT AUTO CHINATOWN WARS	77/524,021	9 and 41
GRAND THEFT AUTO IV	77/524,069	9 and 41

Copies of the TESS printouts for the registrations and pending applications for this GRAND THEFT AUTO family of trademarks are annexed hereto as Exhibit A.

3. The mark GRAND THEFT AUTO, U.S. Registration Number 2,148,765, is incontestable. See Exhibit A.

4. Opposer, directly and through its predecessors-in-interest, has continuously used its GRAND THEFT AUTO Marks to identify its video games, entertainment products and merchandise such as soundtrack albums, t-shirts, posters, and action figures, since at least as early as September 16, 1996.

5. Opposer, directly and through its predecessors-in-interest, has featured the term SPRUNK as a virtual in-game brand of soda in several of its best-selling GRAND THEFT AUTO video games, namely: (i) GRAND THEFT AUTO VICE CITY, first use date May 24, 2002; (ii) GRAND THEFT AUTO: SAN ANDREAS, first use date October 26, 2004; and (iii) GRAND THEFT AUTO IV, first use date March 29, 2007. See Exhibit A.

6. Opposer has invested substantial resources in advertising, promoting and developing its GRAND THEFT AUTO Marks and its GRAND THEFT AUTO video games, entertainment products and merchandise, and continues to spend substantial amounts of money and time in the promotion of the same.

7. By virtue of Opposer's extensive use and promotion of its GRAND THEFT AUTO Marks, and the attendant widespread publicity and notoriety these trademarks have received, the GRAND THEFT AUTO Marks are famous and distinctive of Opposer's video games, entertainment products and merchandise, and with Opposer.

8. By virtue of its extensive use and promotion of the GRAND THEFT AUTO Marks, Opposer has developed valuable goodwill and a strong reputation in its GRAND THEFT AUTO Marks in relation to its video games, entertainment products and merchandise among the video game community and the public generally.

**B. Applicant and the Subject Application**

9. Devone Lawson, Inc. (the "Applicant") filed the Subject Application to register the trademark GRAND THEFT AUTO on the Principal Register on May 22, 2008. A copy of the Subject Application as filed by Applicant is attached hereto as Exhibit B, and a copy of the TESS printout for the Subject Application as processed by the United States Patent and Trademark Office ("USPTO") is attached hereto as Exhibit C.

10. Applicant claims that it is a California corporation with a place of business at 13428 Maxella Avenue, Marina Del Rey, California 90292. See Exhibit B.

11. Applicant seeks to register the trademark GRAND THEFT AUTO for various beverages and beverage-related products, namely "[s]oda pops; [n]on-alcoholic . . . carbonated

beverages; . . . [c]oncentrates, syrups or powders used in the preparation of soft drinks; [p]op; [and s]oft drinks” (the “Identified Goods”) in International Class 32. See Exhibit B.

12. Applicant claims that it first used the trademark GRAND THEFT AUTO, in commerce and otherwise, for each of the Identified Goods at least as early as May 15, 2008. See Exhibit B.

13. Applicant submitted as part of the Subject Application a digital photograph of a soda bottle, for the purpose of “showing the [Specified M]ark as used in commerce” as early as May 15, 2008 (the “Alleged Specimen”). The Alleged Specimen’s label prominently features the phrase “Grand Theft Auto Beverages,” and the name “Sprunk Soda.” See Exhibit B.

14. Applicant submitted as part of the Subject Application a sworn declaration by Applicant’s attorney, Richard B. Jefferson (“Jefferson”) of the law firm Fagerhold & Jefferson, P.C. (the “Declaration”), in which Jefferson states that he is “properly authorized to execute [the] application on behalf of the applicant”; that he “believes the applicant to be the owner of the trademark/service mark sought to be registered”; that “to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true.” See Exhibit B.

**C. Investigation of Applicant and the Subject Application**

15. On or about July 2008, Opposer, by its attorneys, Davis & Gilbert LLP (“D&G”), hired The Stonegate Agency, Inc. (“Stonegate”) to conduct investigations of the Applicant’s alleged use of the trademarks GRAND THEFT AUTO and SPRUNK.

16. Stonegate reported its findings to D&G by a letter dated July 14, 2008, a copy of which is attached hereto as Exhibit D. Stonegate reported that it found no use in commerce or otherwise by Applicant of the trademarks GRAND THEFT AUTO and SPRUNK, and that Applicant does not maintain a physical office. See Exhibit D.

**COUNT I: LIKELIHOOD OF CONFUSION – LANHAM ACT § 2(d)**

17. Opposer incorporates all of the allegations contained in Paragraphs 1 through 16 as if fully set forth herein.

18. The Subject Mark GRAND THEFT AUTO is identical to Opposer's incontestable GRAND THEFT AUTO trademark, and confusingly similar to each of Opposer's other GRAND THEFT AUTO Marks.

19. Opposer's use of its GRAND THEFT AUTO Marks, including its incontestable GRAND THEFT AUTO trademark, predates the filing date of the Subject Application, and predates the alleged first use date of the Subject Mark. Upon information and belief, Opposer's use of its GRAND THEFT AUTO Marks, including its incontestable GRAND THEFT AUTO trademark, also predates any other date on which Applicant is permitted to rely to demonstrate use of the Subject Mark.

20. Applicant's use of the Subject Mark GRAND THEFT AUTO in connection with the Identified Goods is likely to cause confusion and mistake among the video game community and consumers generally, and create the false impression that the Identified Goods are sold, approved or endorsed by Opposer.

21. Likelihood of confusion in this case is exacerbated by the fame of the GRAND THEFT AUTO Marks and by the fact that consumers associate the GRAND THEFT AUTO Marks with goods and services sold, approved or endorsed by Opposer.



22. Therefore, the Subject Mark is unregistrable under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052.

23. Accordingly, Opposer will be injured by registration of the Subject Mark by the USPTO.

**COUNT II: FALSE SUGGESTION OF CONNECTION – LANHAM ACT § 2(a)**

24. Opposer incorporates all of the allegations contained in Paragraphs 1 through 23 as if fully set forth herein.

25. The Subject Mark GRAND THEFT AUTO is identical to Opposer's incontestable GRAND THEFT AUTO trademark, and confusingly similar to each of Opposer's other GRAND THEFT AUTO Marks.

26. The Subject Mark GRAND THEFT AUTO points uniquely and unmistakably to Opposer's GRAND THEFT AUTO Marks, GRAND THEFT AUTO video games, and to Opposer.

27. The Subject Mark GRAND THEFT AUTO consists of or comprises deceptive matter which may falsely suggest that the Identified Goods are sold, approved, or endorsed by Opposer.

28. Applicant's false suggestion of connection to Opposer is exacerbated by Applicant's prominent placement of the phrases "Grand Theft Auto Beverages" and "Sprunk Soda" on the Alleged Specimen's label.

29. Upon information and belief, Applicant's alleged and potential use of the Subject Mark GRAND THEFT AUTO is an attempt to trade off of the positive public association that Opposer has developed in its GRAND THEFT AUTO Marks and thereby capture attention, reap goodwill, and create demand that the Identified Goods otherwise would not achieve.

30. Therefore, the Subject Mark is unregistrable under Section 2(a) of the Trademark Act of 1946, 15 U.S.C. § 1052.

31. Accordingly, Opposer will be injured by registration of the Subject Mark by the USPTO.

**COUNT III: DILUTION – LANHAM ACT § 43(c)**

32. Opposer incorporates all of the allegations contained in Paragraphs 1 through 31 as if fully set forth herein.

33. Opposer's GRAND THEFT AUTO Marks have been widely used and extensively publicized in the United States and, therefore, have become well known and famous as a distinctive symbol of Opposer's goodwill.

34. Upon information and belief, Applicant intends to use the Subject Mark in commerce with the willful intent to trade off of Opposer's reputation, thereby diluting Opposer's famous GRAND THEFT AUTO Marks.

35. Opposer's GRAND THEFT AUTO Marks have achieved and enjoyed fame and distinction for many years prior to any alleged date of first use of the Subject Mark by Applicant.

36. Applicant's use of the Subject Mark in connection with the Identified Goods, which are unrelated to Opposer's video games, entertainment products and other merchandise, will dilute the distinctive quality of Opposer's GRAND THEFT AUTO Marks.

37. Use or registration by Applicant of the Subject Mark will lessen the capacity of Opposer's famous name and GRAND THEFT AUTO Marks to identify and distinguish Opposer's video games, entertainment products and merchandise.

38. Therefore, the Subject Mark is unregistrable under Section 43(c) of the Trademark Act of 1946, 15 U.S.C. § 1052.

39. Accordingly, Opposer will be injured by registration of the Subject Mark by the USPTO.

**COUNT IV: FRAUD (False Statement of Use)**

40. Opposer incorporates all of the allegations contained in Paragraphs 1 through 39 as if fully set forth herein.

41. In the Subject Application, Applicant, by and through its attorney Jefferson, declared under oath, being warned that willful false statements may jeopardize the validity of the Subject Application, that Applicant's first use of the Subject Mark in connection with each of the Identified Goods was at least as early as May 15, 2008. See Exhibit B.

42. Opposer investigated Applicant's alleged use of the Subject Mark, upon information and belief, found that as of July 14, 2008 Applicant had made no use of the Subject Mark in commerce or otherwise. See Exhibit D. Thus, upon information and belief, when Applicant stated in the Subject Application that it first used the Subject Mark at least as early as May 15, 2008, Applicant's statement was materially false.

43. Upon information and belief, Applicant made its false statement of use in the Subject Application in bad faith and with the intent to perpetrate a fraud upon the USPTO because Applicant knew or should have known that it was not using the Subject Mark in connection with the Identified Goods.

44. Upon information and belief, Applicant made its false statement of use in the Subject Application with the intent to induce the USPTO to publish and register the Subject Mark.

45. Upon information and belief, the USPTO reasonably relied on Applicant's false statement in the Subject Application by publishing the Subject Mark.

46. Opposer is likely to be damaged by registration of the Subject Mark.

47. Therefore, the Subject Mark is unregistrable.

**COUNT V: FRAUD (Submission of False Specimen)**

48. Opposer incorporates all of the allegations contained in Paragraphs 1 through 47 as if fully set forth herein.

49. Upon information and belief, the Alleged Specimen is an off-the-shelf soda bottle whose label bears none of the customary indicia of a commercial beverage product – for example, lacking fluid ounce, ingredient and nutrition information listings, manufacturer name and address, expiration date, storage instructions, and a UPC bar code. Instead, the Alleged Specimen's label contains only three lines of text reading simply, "Grand Theft Auto Beverages" and "Sprunk Soda." See Exhibit B.

50. Upon information and belief, Applicant never used the Alleged Specimen in commerce or otherwise. Thus, upon information and belief, when Applicant stated in the Subject Application that the Alleged Specimen "show[ed] the [Subject M]ark as used in commerce on or in connection with" one of the Identified Goods, Applicant's statement was materially false. See Exhibit B.

51. Upon information and belief, Applicant submitted the Alleged Specimen and made its false statement in the Subject Application that it had used the Alleged Specimen in commerce, in bad faith and with the intent to perpetrate a fraud on the USPTO, because Applicant knew or should have known that it was not using the Alleged Specimen – in commerce or otherwise.

52. Upon information and belief, Applicant submitted the Alleged Specimen and made its false statement in the Subject Application that it had used the Alleged Specimen, with the intent to induce the USPTO to publish and register the Subject Mark.

53. Upon information and belief, the USPTO reasonably relied on Applicant's false statement in the Subject Application in publishing the Subject Mark.

54. Opposer is likely to be damaged by registration of the Subject Mark.

55. Therefore, the Subject Mark is unregistrable.

**COUNT VI: FRAUD (False Declaration of Ownership)**

56. Opposer incorporates all of the allegations contained in Paragraphs 1 through 55 as if fully set forth herein.

57. The Alleged Specimen refers directly to Opposer's GRAND THEFT AUTO video games and the virtual in-game SPRUNK brand featured in many of those games through the Alleged Specimen's computer-printed label, which contains the phrases "Grand Theft Auto Beverages" and "Sprunk Soda." See Exhibit B.

58. Therefore, when Applicant submitted the Declaration to the USPTO and stated its belief that it is "the owner of the trademark/service mark sought to be registered," and that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce," such statements were false. See Exhibit B.

59. Applicant made its false Declaration in bad faith and in an attempt to perpetrate a fraud upon the USPTO because Applicant knew or should have known that it did not own the Subject Mark GRAND THEFT AUTO.

60. Upon information and belief, Applicant made its false Declaration with the intent to induce the USPTO to publish the Subject Mark.

61. Upon information and belief, the USPTO reasonably relied on the truth of Applicant's false Declaration in the Subject Application by publishing the Subject Mark.

62. Opposer is likely to be damaged by registration of the Subject Mark.

63. Therefore, Subject Mark is unregistrable.

**COUNT VII: VOID AB INITIO**

64. Opposer incorporates all of the allegations contained in Paragraphs 1 through 63 as if fully set forth herein.

65. Upon information and belief, Applicant did not use the Subject Mark on all of its Identified Goods prior to the filing date of the Subject Application.

66. Because the Subject Mark was not used in commerce or otherwise in connection with each of the Identified Goods, the Subject Application is void ab initio.

67. Therefore, the Subject Mark is unregistrable.

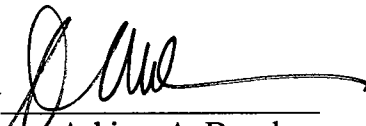
WHEREFORE, Opposer prays that said Application Serial No. 77/480,852 be rejected and that registration of the mark therein shown be denied.

Dated: October 29, 2008

Respectfully submitted,

DAVIS & GILBERT LLP

By

  
Ashima A. Dayal

1740 Broadway  
New York, New York 10019  
(212) 468-4800

Attorneys for Opposer

# **EXHIBIT A**



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#### Typed Drawing

**Word Mark** GRAND THEFT AUTO  
**Goods and Services** IC 009. US 021 023 026 036 038. G & S: computer software and programs all being computer games; video game software; laser disks cartridges, audio and video tapes, audio and video cassettes and CD-ROMs all bearing video games; video game computer software adapted for use with television receivers and computers; motion picture films featuring cartoons and instruction manuals sold as a unit therewith

IC 016. US 002 005 022 023 029 037 038 050. G & S: printed matter, namely, leaflets and newsletters featuring cartoon characters, [ comic books, ] posters, photographs, [calendars, ] post cards, [ greeting cards, coloring books, decalcomanias, ] stickers, iron-on transfers, gift wrapping paper, [ paper party decorations, pens, pencils, pencil cases, crayons, rulers, ] and general purpose plastic bags

(CANCELLED) IC 028. US 022 023 038 050. G & S: [ coin operated video games ]

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 75166185

**Filing Date** September 16, 1996

**Current Filing Basis** 44E

**Original Filing Basis** 1B;44D

**Published for Opposition** January 13, 1998

**Change In** CHANGE IN REGISTRATION HAS OCCURRED



**Registration****Registration Number** 2148765**Registration Date** April 7, 1998**Owner** (REGISTRANT) DMA Design Ltd. COMPANY UNITED KINGDOM Discovery House,  
Dundee Technology Park Dundee, DD2 1SW SCOTLAND(LAST LISTED OWNER) TAKE-TWO INTERACTIVE SOFTWARE, INC. CORPORATION  
DELAWARE 622 BROADWAY NEW YORK NEW YORK 10012**Assignment Recorded** ASSIGNMENT RECORDED**Attorney of Record** Alexandra Nicholson, Esq. and Deirdre Davis, Esq.**Priority Date** March 16, 1996**Type of Mark** TRADEMARK**Register** PRINCIPAL**Affidavit Text** SECT 15. PARTIAL SECT 8 (6-YR). SECTION 8(10-YR) 20080506.**Renewal** 1ST RENEWAL 20080506**Live/Dead Indicator** LIVE

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<b>Word Mark</b>	GRAND THEFT AUTO III
<b>Goods and Services</b>	IC 009. US 021 023 026 036 038. G & S: Computer game software and video game programs. FIRST USE: 20011031. FIRST USE IN COMMERCE: 20011031
<b>Mark Drawing Code</b>	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
<b>Serial Number</b>	76468228
<b>Filing Date</b>	November 19, 2002
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	June 3, 2003
<b>Registration Number</b>	2755932
<b>Registration Date</b>	August 26, 2003
<b>Owner</b>	(REGISTRANT) Take-Two Interactive Software, Inc. CORPORATION DELAWARE 575 Broadway New York NEW YORK 10012
<b>Assignment</b>	

<b>Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	G. Roxanne Elings
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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<b>Word Mark</b>	<b>GRAND THEFT AUTO VICE CITY</b>
<b>Goods and Services</b>	IC 009. US 021 023 026 036 038. G & S: Computer game software and video game programs. FIRST USE: 20020524. FIRST USE IN COMMERCE: 20020524
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters
<b>Serial Number</b>	76468229
<b>Filing Date</b>	November 19, 2002
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	September 21, 2004
<b>Registration Number</b>	2909548
<b>Registration Date</b>	December 14, 2004
<b>Owner</b>	(REGISTRANT) Take-Two Interactive Software, Inc. CORPORATION DELAWARE 575

	Broadway New York NEW YORK 10012
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Alexandra Nicholson, Esq.
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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**GRAND THEFT AUTO:  
SAN ANDREAS**

**Word Mark** GRAND THEFT AUTO: SAN ANDREAS

**Goods and Services** IC 009. US 021 023 026 036 038. G & S: Computer game programs and software and computer game cartridges. FIRST USE: 20041026. FIRST USE IN COMMERCE: 20041026

**Standard  
Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 78342291

**Filing Date** December 17, 2003

**Current Filing Basis** 1A

**Original Filing  
Basis** 1B

**Published for  
Opposition** February 1, 2005

**Registration  
Number** 2993273

**Registration Date** September 6, 2005

**Owner** (REGISTRANT) Take-Two Interactive Software, Inc. CORPORATION DELAWARE  
622 Broadway New York NEW YORK 10012

**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Alexandra Nicholson, Esq.  
**Prior Registrations** 2148765;2755932  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "San Andreas" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**Word Mark**  
**Goods and Services**

**GRAND THEFT AUTO CHINATOWN WARS**

IC 009. US 021 023 026 036 038. G & S: Computer game programs and software, namely, programs and software on recorded media for, and delivered digitally to, personal computers, video game consoles, handheld computing devices, mobile computing devices, and other computing devices

IC 041. US 100 101 107. G & S: Entertainment services, namely, production of computer game programs and software for entertainment purposes and providing information in the fields of computer games, computer game software and entertainment via the Internet

**Mark Drawing Code**

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code**

26.09.21 - Squares that are completely or partially shaded

**Serial Number**

77524021

**Filing Date**

July 16, 2008

**Current Filing Basis**

1B

**Original Filing Basis**

1B



**Owner** (APPLICANT) Take-Two Interactive Software, Inc. CORPORATION DELAWARE 622  
Broadway New York NEW YORK 10012

**Attorney of  
Record** Alexandra Nicholson, Esq.

**Prior  
Registrations** 2148765;2755932;2909548

**Description of  
Mark** Color is not claimed as a feature of the mark.

**Type of Mark** TRADEMARK. SERVICE MARK

**Register** PRINCIPAL

**Live/Dead  
Indicator** LIVE

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**Word Mark**  
**Goods and Services**

**GRAND THEFT AUTO IV**

IC 009. US 021 023 026 036 038. G & S: Computer game programs and software, namely, programs and software on recorded media for, and delivered digitally to, personal computers, video game consoles, handheld computing devices, mobile computing devices, and other computing devices. FIRST USE: 20070700. FIRST USE IN COMMERCE: 20070700

IC 041. US 100 101 107. G & S: Entertainment services, namely, production of computer game programs and software for entertainment purposes and providing information in the fields of computer games, computer game software and entertainment via the Internet. FIRST USE: 20070329. FIRST USE IN COMMERCE: 20070329

**Mark Drawing Code**

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

**Serial Number** 77524069

**Filing Date** July 16, 2008

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Owner** (APPLICANT) Take-Two Interactive Software, Inc. CORPORATION DELAWARE 622

Broadway New York NEW YORK 10012

**Attorney of  
Record**

Alexandra Nicholson, Esq.

**Prior  
Registrations**

2148765;2755932;2909548

**Description of  
Mark**

Color is not claimed as a feature of the mark.

**Type of Mark**

TRADEMARK. SERVICE MARK

**Register**

PRINCIPAL

**Live/Dead  
Indicator**

LIVE

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# **EXHIBIT B**

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PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 09/30/2008)

## Trademark/Service Mark Application, Principal Register

### TEAS Plus Application

Serial Number: 77480852

Filing Date: 05/22/2008

*NOTE: Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
<b>MARK INFORMATION</b>	
*MARK	Grand Theft Auto
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Grand Theft Auto
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Devone Lawson, Inc.
*STREET	13428 Maxella Avenue
INTERNAL ADDRESS	507
*CITY	Marina Del Rey

<b>*STATE</b> (Required for U.S. applicants)	California
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b> (Required for U.S. applicants only)	90292
<b>LEGAL ENTITY INFORMATION</b>	
<b>*TYPE</b>	CORPORATION
<b>* STATE/COUNTRY OF INCORPORATION</b>	California
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>*INTERNATIONAL CLASS</b>	032
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 05/15/2008
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 05/15/2008
<b>*IDENTIFICATION</b>	Soda pops
<b>*FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 05/15/2008
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 05/15/2008
<b>SPECIMEN FILE NAME(S)</b>	\\TICRS\EXPORT\IMAGEOUT\7 74 \\808\77480852\xml1\FTK0 003.JPG
<b>SPECIMEN DESCRIPTION</b>	a digital picture of Applicant's soft drink product
<b>*IDENTIFICATION</b>	Non-alcoholic beverages, namely, carbonated beverages
<b>*FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 05/15/2008
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 05/15/2008
<b>SPECIMEN FILE NAME(S)</b>	\\TICRS\EXPORT\IMAGEOUT\7 74 \\808\77480852\xml1\FTK0 003.JPG
<b>SPECIMEN DESCRIPTION</b>	a digital picture of Applicant's soft drink product
<b>*IDENTIFICATION</b>	Soft drinks, namely, <b>carbonated soft drink</b>

<b>*FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 05/15/2008
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 05/15/2008
<b>SPECIMEN FILE NAME(S)</b>	\\TICRS\EXPORT\IMAGEOUT\7 74 \808\77480852\xml1\FTK0 003.JPG
<b>SPECIMEN DESCRIPTION</b>	a digital picture of Applicant's soft drink product
<b>*IDENTIFICATION</b>	Concentrates, syrups or powders used in the preparation of soft drinks
<b>*FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 05/15/2008
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 05/15/2008
<b>SPECIMEN FILE NAME(S)</b>	\\TICRS\EXPORT\IMAGEOUT\7 74 \808\77480852\xml1\FTK0 003.JPG
<b>SPECIMEN DESCRIPTION</b>	a digital picture of Applicant's soft drink product
<b>*IDENTIFICATION</b>	Pop
<b>*FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 05/15/2008
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 05/15/2008
<b>SPECIMEN FILE NAME(S)</b>	\\TICRS\EXPORT\IMAGEOUT\7 74 \808\77480852\xml1\FTK0 003.JPG
<b>SPECIMEN DESCRIPTION</b>	a digital picture of Applicant's soft drink product
<b>*IDENTIFICATION</b>	Soft drinks
<b>*FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 05/15/2008
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 05/15/2008
<b>SPECIMEN FILE NAME(S)</b>	\\TICRS\EXPORT\IMAGEOUT\7 74 \808\77480852\xml1\FTK0 003.JPG
<b>SPECIMEN DESCRIPTION</b>	a digital picture of Applicant's soft drink product

**ATTORNEY INFORMATION**

NAME	Richard B. Jefferson, Esq
FIRM NAME	Fagerholm & Jefferson, P.C.
STREET	3500 West Olive Avenue
INTERNAL ADDRESS	Third Floor
CITY	Burbank
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	91505
PHONE	(818) 973-2731
FAX	(818) 973-2781
EMAIL ADDRESS	rbjefferson@fjlawcorp.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes

**CORRESPONDENCE INFORMATION**

*NAME	Richard B. Jefferson, Esq.
FIRM NAME	Fagerholm & Jefferson, P.C.
*STREET	3500 West Olive Avenue
INTERNAL ADDRESS	Third Floor
*CITY	Burbank
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE	91505
PHONE	(818) 973-2731
FAX	(818) 973-2781
*EMAIL ADDRESS	rbjefferson@fjlawcorp.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes

**FEE INFORMATION**



NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Richard B. Jefferson/
* SIGNATORY'S NAME	Richard B. Jefferson
* SIGNATORY'S POSITION	Attorney of record
* DATE SIGNED	05/22/2008

## **Trademark/Service Mark Application, Principal Register**

### **TEAS Plus Application**

**Serial Number: 77480852**

**Filing Date: 05/22/2008**

#### **To the Commissioner for Trademarks:**

**MARK:** Grand Theft Auto (Standard Characters, see mark)

The literal element of the mark consists of Grand Theft Auto.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Devone Lawson, Inc., a corporation of California, having an address of 507, 13428 Maxella Avenue, Marina Del Rey, California, United States, 90292, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

#### **For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 032: Soda pops; Non-alcoholic beverages, namely, carbonated beverages; Soft drinks, namely, carbonated soft drink; Concentrates, syrups or powders used in the preparation of soft drinks; Pop; Soft drinks

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 032, the mark was first used at least as early as 05/15/2008, and first used in commerce at least as early as 05/15/2008, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) a digital picture of Applicant's soft drink product.

Specimen File 1

The applicant hereby appoints Richard B. Jefferson, Esq of Fagerholm & Jefferson, P.C., Third Floor, 3500 West Olive Avenue, Burbank, California, United States, 91505 to submit this application on behalf of the applicant.

Correspondence Information: Richard B. Jefferson, Esq.

Third Floor  
3500 West Olive Avenue  
Burbank, California 91505  
(818) 973-2731(phone)  
(818) 973-2781(fax)  
rbjefferson@fjlawcorp.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051 (b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Richard B. Jefferson/ Date Signed: 05/22/2008

Signatory's Name: Richard B. Jefferson

Signatory's Position: Attorney of record

RAM Sale Number: 5513

RAM Accounting Date: 05/22/2008

Serial Number: 77480852

Internet Transmission Date: Thu May 22 03:52:59 EDT 2008

TEAS Stamp: USPTO/FTK-69.231.53.39-20080522035259445

185-77480852-400958c5b33d0d1669f1fa2e2cf

1165843c-ET-5513-20080522034007430480

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# Grand Theft Auto

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Document Description: **TEAS Plus New Application**

Mail / Create Date: **22-May-2008**

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Grant Scott Auto

Beverages



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# **EXHIBIT C**



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# Grand Theft Auto

<b>Word Mark</b>	GRAND THEFT AUTO
<b>Goods and Services</b>	IC 032. US 045 046 048. G & S: Soda pops; Non-alcoholic beverages, namely, carbonated beverages; Soft drinks, namely, carbonated soft drink; Concentrates, syrups or powders used in the preparation of soft drinks; Pop; Soft drinks. FIRST USE: 20080515. FIRST USE IN COMMERCE: 20080515
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77480852
<b>Filing Date</b>	May 22, 2008
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	September 16, 2008
<b>Owner</b>	(APPLICANT) Devone Lawson, Inc. CORPORATION CALIFORNIA 507 13428 Maxella Avenue Marina Del Rey CALIFORNIA 90292
<b>Attorney of Record</b>	Richard B. Jefferson, Esq

Type of Mark    TRADEMARK  
Register        PRINCIPAL  
Live/Dead  
Indicator       LIVE

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# **EXHIBIT D**

# THESTONEGATEAGENCY, INC.

27 WHITEHALL STREET, 8TH FLOOR, NEW YORK, N.Y. 10004 • (212) 248-3600 • Fax (212) 248-7676

July 14, 2008

**BY TELECOPIER**

Ashima A. Dayal, Esq.  
Davis & Gilbert LLP  
1740 Broadway  
New York, New York 10019

Our File: 262-490

Re: Devone Lawson, Inc. (22801-1-1)

Dear Ashima:

You asked that we conduct preliminary inquiries into the use of Grand Theft Auto and Sprunk for beverages by Devone Lawson, Inc. You asked that we maintain our inquiries within a budget of \$300.00. No use was found. Our findings are reported below.

The trademark applications you identified are pending. Devone Lawson, Inc. provides an address of 507 13428 Maxella Avenue, Marina Del Rey, California 90292.

California corporation records identify Devone Lawson, Inc. as an active domestic entity formed July 24, 2007. The agent for service of process is Fred Devone Lawson, Jr., 13428 Maxella Avenue, Marina Del Rey California 90292.

Telephone reverse directories show 48 listings at the Maxella Avenue address. A quick review of the names revealed no apparent beverage companies and nothing for Lawson. We did note a listing for a Mail Boxes Etc. operation at the address.

A search of U.S. trademark records which mention "Devone Lawson" returned twenty-nine applications. Five are registered. They are: "Complete Trimester Prenatal Water [RN 3449351]; Pediatric Water 3428938; Healthy Kids Water 3420964; Waterlicious 3411644; and Pet H2O 3398266. The entire list is enclosed as **Exhibit A**.

A search of the Internet WWW using Google revealed no pages which mention "Devone Lawson" and beverages called Sprunk or Grand Theft Auto.

We searched periodicals nationwide for references to "Devonc Lawson" and found eight articles ranging in date from February 11, 1999 to April 10, 2008. None mention Sprunk or Grand Theft Auto. The three oldest articles are about a person named Fred Devone Lawson, 46 years of age, who faced criminal charges in Augusta Georgia. An article from the Augusta Chronicle from July 2003 is about a person named Devone Lawson, Jr. who is an actor with small parts including some episodes of the Sopranos. The captions relating to two December 2003 articles mention the Georgia Articles of Incorporation of an entity named "Devone Lawson Investments." Two April 2008 articles are Newswire items which claim that Waterlicious, Inc. of Marina Del Rey, California is in talks with McDonald's Corporation to supply Waterlicious beverages for the Happy Meal [Exhibit B]. The article indicates Waterlicious, Inc. has offices in Marina Del Rey, California and New York, New York. A California contact telephone number for Waterlicious, Inc. is provided.

Waterlicious, Inc. is named in the *Blogspot.com* Internet reference you identified.

We contacted telephone directory assistance for Marina Del Rey, California and New York, New York and found no listings for Devone Lawson, Inc., or Waterlicious, Inc. The D&B database was also searched. No record for either business in California or New York were found. D&B also returned no California or New York business for which a person name Devone Lawson or Fred Devone Lawson is a known owner, officer or contact person.

A search of the Internet revealed that *Waterlicious.com* auto-directs to a one page website at *Kidsvitaminwater.com*. Images of products called Waterlicious, Pediatric Water and Agualicious are shown. Nothing called Sprunk. The page contains a contact telephone number of (323) 386-4110.

Our call to (323) 386-4110 was answered, "Waterlicious." I asked were I can purchase the company's beverages in New York. The person asked that I wait a moment and placed the call on hold. During the hold it sounded as if the call was being transferred around. The same person came to the line and said that she was not able to find someone who could help me. She said, "As far as I know we are just working on distributing it in California." I asked, "Do you have something called Sprunk?" She said, "I've never heard of it." I asked, "What products do you have?" She said, "As far as I know we just have the water."

It sounded as if we reached a professional call center and not actually Waterlicious, Inc. When asked, the person claimed that the I had reached Waterlicious, Inc. and not a call center. She said that she is located in California.

Please feel free to call me to discuss this further. Judging from our preliminary inquiries, the business has no physical office address. Our sources indicate that telephone number (323) 386-4110 is not a published listing

We have reached or exceeded our initial authorized budget and ceased our inquiries. If no further investigation is authorized we will close our file in this matter.

Cordially,

The Stonegate Agency, Inc.



Michael F. Falsone

MFF/md  
Enclosures

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